

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By **CHAIRMAN KATHLEEN GALVIN-HALCRO**, on January 19, 2005 at 3:00 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Kathleen Galvin-Halcro, Chairman (D)
Rep. Joan Andersen, Vice Chairman (R)
Rep. Gary Branae, Vice Chairman (D)
Rep. Edward B. Butcher (R)
Rep. Margaret H. Campbell (D)
Rep. Tim Dowell (D)
Rep. Wanda Grinde (D)
Rep. Roger Koopman (R)
Rep. Bob Lake (R)
Rep. Joe McKenney (R)
Rep. Holly Raser (D)
Rep. Scott Sales (R)
Rep. Jon Sonju (R)
Rep. Dan Villa (D)
Rep. John Ward (R)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Branch
Chris Lohse, Legislative Branch
Nina Roatch-Barfuss, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 302, 1/17/2005
Executive Action: HB 83; HB 162

HEARING ON HB 302

Sponsor: REPRESENTATIVE ROBYN DRISCOLL, HD 51, Billings

Opening Statement by Sponsor:

REP. DRISCOLL stated that the bill will untie the hands of school superintendents statewide. At present, a school superintendent has the responsibility of creating a budget and deciding whether a mill levy may be needed to fund the budget. If the school board decides to attempt to pass a levy, from that time on, the superintendent becomes uninvolved. The person who has the most information is unable to share it with any community organization or lobby on behalf of the levy. Billings Public Schools began a superintendent search in early 2003. A consultant hired by School District 2, two years previously had put together a list of what the people of Billings wanted in a school leader. Answers included: a passion for education, the ability to listen and be accessible, and the ability to inspire people to action. A Billings Gazette editorial in February 2003 stated that, "The next superintendent of Billings Public Schools must be a good communicator and a great leader." When the board began its search, the chairperson promised the selection would employ a community-based, community-led, committee. That is just what they did. The Sponsor distributed Gazette editorials that date back to 2003. The people of Billings wanted a good communicator when they hired a superintendent. She told the committee she had highlighted the parts that are most important to **HB 302**. Candidates for the position were interviewed by the trustees, as well as members of the community committee. Interviews were open to the public. All of the candidates placed a great deal of emphasis on communication skills.

When Rodney Svec was chosen, he was applauded by trustees and community committee members for his ability to connect with people and being someone with excellent communication skills. Mr. Svec came to work for the Billings Public Schools in July 2003 with the job goal to provide leadership in developing and maintaining the best educational program and service, while implementing and adapting board policies. **REP. DRISCOLL** presented the first page of Mr. Svec's job description. She noted that this past August the Gazette ran an editorial opinion; "School District Two needs business advice and link to local leaders." The Gazette was commending the school board for taking steps toward improving communications with local business leaders by forming a Business Advisory Council whose members would meet quarterly with trustees for discussion on school issues; the goal being to improve connections with the business community and

improve School District Two's lines of communication with the community. The research the sponsor had done for the bill, led her to believe that the main quality for a school superintendent is communication skills. That would be communication with employees, parents and kids, and perhaps, most importantly, with the community. Without the amendment presented in the bill, a superintendent is not able to communicate to the best of his/her ability. He/she is not allowed to visit community organizations to explain why a school bond will help schools and the reasons the superintendent had for recommending the levy to the board. A school superintendent should be allowed to lobby on behalf of schools whenever he/she can. The sponsor feels that is part of the job.

[EXHIBIT \(edh14a01\)](#)

[EXHIBIT \(edh14a02\)](#)

Proponents' Testimony:

Rodney Svee, Billings School Superintendent, explained that current law does not allow school employees to speak in a positive or negative way for any school finance issue. Last spring the district ran a bond issue. With the bond issue the trustees had a brochure of information that they wanted to send to the community. The board's attorney spent five hours working on the wording so that the board could be assured that the wording was neutral. Within two hours of sending it out, there had been an unfair campaign practices charge filed with the state office. The charge was ruled to be "not valid." If someone calls a superintendent, principal, or teacher at home, and that person is not on duty, then he/she can speak to an issue. It is unreasonable to have the person that the community turns to for communication, not being able to speak about the issue. If there is anger in the community, it should come to his position. In the bond issue, it was his board members who had to step up. That is not acceptable to him. The board members should be talking to members of the community and working on the politics of such an issue. If there is heat, it should be addressed to the superintendent. Mr. Svee could not put out information about the bond issue.

Lance Melton, Montana School Boards Association, (MSBA), stood in support of the proposed amendment to current law. Trustees are volunteers. They are not paid for their services. Present law dictates that the clerk is present to take minutes, the superintendent must be there to provide recommendations and the meeting must be in a public building. It is unthinkable that the board would meet to decide whether it is going to support a bond issue which the board had decided to put before the voters. In a bond issue there are vigorous opponents and passionate advocates.

The board is going to support it's own bond issue. It is prohibited by law and required by law at the same time. The bill offers a solution to the present dilemma.

Terry Minow, Montana Education Association-Montana Federation of Teachers, (MEA-MFT), rose in strong support of **HB302**. The bill is a common sense change in the law.

Gary Forrester said during his time on the Billings School Board it seemed silly to think that the school had a superintendent that is intimately involved with a school board and it's decisions that can't speak out on a bond levy. The superintendent is the person the board depends on most. He said, "To have a superintendent have to step out of the fray, is wrong."

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. KOOPMAN told Mr. Svee he was trying to understand the restrictions Mr. Svee is under at present as a superintendent. He asked, "Are you able, when you are not under school time, to advocate for a levy or bond issue in anyway you choose?" **Mr.**

Svee answered that technically, the answer is yes. As a superintendent he believes he is never off the clock. It would be hard to separate "his" time from school time. He made one presentation to a group of senior citizens in the evening. They just wanted information. He provided information only. He informed them before the meeting that he could not offer any opinions. Any kind of answer can be misconstrued to be support or non-support. He was out of the state when the current law was passed. When he returned to Montana he found the law ludicrous.

REP. KOOPMAN asked if it was possible to define when he is on the clock and when not, would that be sufficient for him. **Mr. Svee** answered that it would be if the situation that Mr. Melton spoke to was not present. He does not know how to separate himself from the facts that he has learned in his position.

REP. KOOPMAN asked Mr. Svee, if as a professional hired by the school district, he sees any problems politicized in his role of a public servant by being an advocate for a particular point of view while he is serving all people. **Mr. Svee** replied that it may be problematic in certain settings, but at the same time, in his present circumstance, he doesn't know how a superintendent can ever view himself as not being in a political setting. **REP. KOOPMAN** was wondering if a superintendent, in some cases, can

fall back on a doctrine that says he is not to speak out as an advocate for a ballot issue such as a levy. The Representative believes that might take pressure off the superintendent. **Mr. Svee** replied, "Yes." **Mr. Svee** remarked that it was very comfortable to be able to sit back last spring and watch the fray, but he felt it was not the position he was paid to be part of. It was his feeling that he was paid to lead and that frustrated him.

REP. MCKENNEY required information from Lance Melton. He was looking for a history lesson. He was wondering about existing language in law and if there had been problems in the past with public employees getting involved in levy or bond issues. The **REPRESENTATIVE** wondered about the present muzzle. He was wondering if enacting this bill would bring forth past challenges that caused the law to read as it does. **Mr. Melton** said he was unaware of any challenges other than the one in Billings placed before the Commissioner on Political Practices. He was not sure why the law was changed in a previous session.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 24.6}

REP. BUTCHER inquired of Mr. Svee as to whether there are proponents and opponents when most mill levies pass by five or six percentage points. **Mr. Svee** replied, "Yes." **REP. BUTCHER** said that with Mr. Svee's agreement in mind, obviously Mr. Svee is employed by the school district; i.e., total population and taxpayers in the community. **Mr. Svee** again agreed with the statement. **REP. BUTCHER** believes that if Mr. Svee takes a position on a levy vote, Mr. Svee is taking a position in opposition to a percentage of the voters in the district. **REP. BUTCHER** said this would indicate that Mr. Svee would be going against half his employers. **Mr. Svee** reported that his employers are elected board members. They stand subject to elections. **REP. BUTCHER** agreed with Mr. Svee and continued by saying the board members are elected by the people who pay the tab. The public has selected the board members to represent them and make decisions on their behalf. He believes it all follows in a pattern. He is pondering the action where Mr. Svee comes out for or against situation, he is obviously going against part of the people who are paying the bill. **Mr. Svee** agreed.

REP. BUTCHER believes Mr. Svee's position is as an informational source rather than an advocate of either side of an issue. **Mr. Svee** again agreed, but said the issue is not whether the superintendent comes out as a proponent or opponent of an issue, the issue is how finely does one have to craft his words to avoid political charges. What he has found is, having legal personnel cleanse documents doesn't eliminate the charges. **REP. BUTCHER**

replied that his concern with **HB 302** is that it specifically states, "...in support of a bond issue or levy." In that statement it appears that the bill is giving carte blanche to take a specific position rather than being an informational source. He asked Mr. Svee if he agreed with his thoughts. **Mr. Svee** replied that he did not read the bill in that way. He believes he should represent his board. If a majority of his board told him to come out in opposition to something, then that is what he would do.

{Tape: 1; Side: A; Approx. Time Counter: 24.6 - 30}

{Tape: 1; Side: B}

REP. BUTCHER continued. As he sees Mr. Svee's position, he is an informational witness to such issues. The bill changes that for Mr. Svee's position and for the board. He could see the possibility of mounting a sudden TV advertising campaign with Mr. Svee featured as the high profile figure, who has all the sources of information, which the opponents would have a more difficult time getting. He questioned whether this could happen. **Mr. Svee** saw his thoughts as an interesting process. Through all of Mr. Svee's experience, he didn't believe that was ever an issue. The law has been in place for two years. In his experience, the law doesn't work. Mr. Svee believes without the present law there was not a problem in any district he served before taking the position in Billings.

REP. LAKE inquired of **REP. DRISCOLL** to tell him if the wording in the bill is going to be adequate to cover the present circumstances. What is being talked about is providing information to the public. He sees the bill as allowing that information to carry a degree of support. He questions whether the Sponsor might want to add the words, "or opposition," because if something is happening that the superintendent is not happy about, the bill is limiting the superintendent strictly to support. It may put him in a corner that was not intended. He asked if the sponsor could envision the bill opening the door for superintendents to go out on the band wagon waving flags up and down the street to get a bond levy passed. **REP. DRISCOLL** said she believes an amendment should be offered to add the words, "or opposition."

REP. LAKE believes the committee needs to move onto the next stage. He ponders what the level of support should be for the superintendent. He doesn't believe the board of trustees or the superintendent should be allowed to go on the attack. If the superintendent's comments are based on information, he wonders if the sponsor could see the situation getting out of order and the superintendent not only becoming an advocate but becoming a flag waver. **REP. DRISCOLL** said that surely was not her or Mr. Svee's

intent. Her aim is for a superintendent to be able to open the lines of communication. **REP. DRISCOLL** asked if under the same cloud on the books at present, does that limit teachers and other district employees from actively supporting a bond levy. **REP. DRISCOLL** replied that it does not if they are not in the halls of the school. If a parent called during the day or students were talking in the halls, the Sponsor doesn't believe the teacher could voice an opinion.

During the above testimony **REP. GALVIN-HALCRO** left the meeting to testify at another hearing. **REP. BRANAE** began to preside over the meeting.

REP. VILLA requested information from Mr. Melton. He said in his opinion what the bill is advocating is information for the public. From his reading of the bill, the superintendent will be able to go out and not be afraid of having frivolous charges filed against him or the district. **Mr. Melton** replied that he agrees with the Representative's reading of the bill. MSBA would be very comfortable if the law said one could use facilities, equipment and personnel when it was properly incidental to another activity required or authorized by law. The law says that a board of trustees hires and directs the activities of the superintendent. **Mr. Melton** indicated that he would be comfortable without the additional restriction on what is to be properly incidental. There are other laws that determine what's properly incidental to an activity that is required or authorized by law. If the committee wanted to get away from exclusive support, he would strike "for in support of" from the bill and word it, "related to a bond issue, or to a levy issue presented to the electors."

REP. VILLA needed more information about legal costs. He said he hears much about efficiencies in regard to the districts. In his opinion, legal costs fall within efficiencies. He believes that Mr. Svec is being forced to submit, time and time again, to lawyers' review of plain simple documents that have been limited by present law, which the sponsor is trying to remedy. His question is, "What money might the district save by not spending money on lawyers?" **Mr. Melton** stated that lawyer's services are very expensive for a district. A document needs several reviews and finally it gets down to being "so value neutral" that the document couldn't be proved false from any perspective.

REP. VILLA asked if, based on Mr. Melton's answers, that by increasing the right to participate and the right to know of the superintendent and the right to know on the part of the public, the legal cost will be decreased. That would then increase current spending on educational issues within current budgets.

He asked, "Would that be a correct interpretation?" **Mr. Melton** replied that his assumption is reasonable. A typical review of a document being discussed might take an attorney half a day, with hourly rates between \$100 and \$150. Some fees are greater yet. One can presume if there was a more relaxed standard on analysis of that type of literature, there would less spent on attorneys in reviewing it.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 11.7}

REP. RASER also required information from Mr. Melton. She wished to go back to his suggested change in the wording. She was pondering whether the board of trustees would need a majority of the elected board to recommend a levy. **Mr. Melton** assured her that she was correct. **REP. RASER** believes if the board was recommending that the district pass a levy and the superintendent was hired by the board, then the superintendent should act under their direction. She was wondering if the superintendent can do anything in opposition to the board's directive. **Mr. Melton** agreed with her thoughts and believes a superintendent is not hired to go against the board's directive.

REP. RASER asked if there could be a situation where the board is recommending a levy, and the school superintendent would do anything other than speak in favor of the levy. **Mr. Melton** said the committee must remember that the problem does not exist just when a levy is to be run; he believes that the existing law actually makes it illegal to voice concerns before the board votes. Mr. Melton believes there are circumstances where different boards are affected by the same levy in different ways. Billings is a good example. The taxpayers in outlying districts may be paying into a high school district and their local elementary board could very well take a position in opposition to the high school levy. He believes, allowing for expressions of both support and opposition under the suggested law, is the right way to go to insure that everyone is allowed to speak the voice that the trustee has been elected to speak and direct their superintendent to follow their direction.

REP. RASER requested information from Eddye McClure. The **REPRESENTATIVE** wondered about the history of the present situation. She was curious how the present law came to be. **Ms. McClure** replied that she was thinking about pulling up the minutes of the meeting when the law was discussed. It would be the easiest way to figure out why the change was made. She will bring them to the committee.

REP. DOWELL required information from Mr. Melton. The Representative said that he noticed the bill covers school superintendents, but he knows of many schools that don't have a

superintendent. They are administered by a County Superintendent. They have principals or head teachers instead of a superintendent. He asked, "Would the principals or head teachers be included in the bill?" **Mr. Melton** said that he made a good point. He verified that such districts exist. The individuals mentioned by the Representative act in lieu of a school superintendent under the accreditation standards. There are districts that don't use any supervising teachers. They may use a district clerk with access to the County Superintendent for supervision of staff or periodic evaluations. In his experience, typically in those districts, the trustees definitely take the bull by the horns, particularly when they don't have a lead teacher. The board takes an active role in managing the school. His organization often receives communications from a supervising teacher that are much like communications from a superintendent in a district that has one.

REP. DOWELL remarked that he was thinking of a school like the one he teaches in and a number of districts in Flathead County that have a principal that has no teaching duties. This person attends all board meetings. A person looking at that principal would view him/her as the superintendent. He does not see the principal he has described, as being represented in the bill being discussed. **Mr. Melton** believed the Representative was correct.

REP. SALES wished to question Mr. Svee. He wondered, in all the years Mr. Svee had practiced his profession, if he had ever opposed a bond issue. **Mr. Svee** said that he follows the direction given to him by the board. **REP. SALES** asked if Mr. Svee knew of a superintendent that had opposed the board bond issue. **Mr. Svee** remarked that he might come up with two examples. One superintendent did not finish the school year and the second superintendent ended up in a lawsuit with his board.

REP. RASER was curious as to whether Mr. Svee has the opportunity to advise the board on bond or levy issues before they are presented to the electors. **Mr. Svee** assured her that he believes that is one of his primary duties and that is what he believes is the worst thing about current law. One of the most visible people to the community in speaking to a bond issue, or to the need for a facility, is the superintendent or the principal. When the actual decision is made, under present law, the superintendent is not an issue. He has to step back. He believes it sends a message to the voters. If a voter calls him and asks particular questions and the superintendent has to be political and not answer the person directly, it is a problem. **REP. RASER** asked if he had ever, in his experience as a superintendent, advised a board that the levy it was seeking was

too high or advised caution because of the concerns of the people who lived in the district. **Mr. Svee** replied, "Yes." The board needs to know about fifty-fifty situations. After advising the board, he follows the board's directive.

REP. BUTCHER inquired of Mr. Svee whether in his experience, other than something like an athletic complex, if he had ever seen a situation where the board developed the information on a levy rather than the superintendent. He believes that usually the superintendent lays out the needs of the district and then sells the board on the process. **Mr. Svee** remarked that in his experience the answer would be no. **Mr. Svee** said he could be a rare example, but he had never served a "bad" board. He believes that a board is always a doorknob away. The board tends to be closer to the community and listening much more closely than the hired professional. He has taken issues to a board and they have told him it wasn't the right time for the issues. **REP. BUTCHER** said he was hearing in Mr. Svee's response that the superintendent presents the information and then the board is the one that accepts or rejects the information. The Representative said he hadn't seen many board members initiating projects. Most of them come from the superintendent laying out the ideal.

Mr. Svee answered that he might be different, but that is not how he and his board function.

{Tape: 1; Side: B; Approx. Time Counter: 11.7 - 27}

REP. KOOPMAN quizzed Mr. Melton about school students bringing home, what the parents saw as propaganda, about levies encouraging parents to vote a certain way. He wondered if Mr. Melton understood those peoples' concerns and if he believed there was a moral or ethical issue in that happening in using money extracted from people through taxation to promote political positions and ideas to which they disagree. **Mr. Melton** remarked that his office is not in favor of a superintendent or board doing that. Boards have an obligation to serve an entire community, maybe even more of an obligation than legislators have, because there are students directly at stake in everything they do.

REP. KOOPMAN continued by directing his attention to teachers who are hired by the board to serve all the public and asked if they should be in the community promoting a political position on one side or the other of a ballot issue. The Representative believes there also is a problem with regard to superintendents who are hired by the board to serve all the people and are using public funds, public resources, to promote issues. **Mr. Melton** replied that he saw two key distinctions. The first is that the teacher is in direct proximity to impressionable youth and that bares with it a heightened responsibility of neutrality and the teacher

should not have the right to support an issue with regard to pupils. The other distinction he saw was that the law provides that the superintendent really is the personification of the board when the board is not in session. A teacher is not. When the superintendent is disavowed, the board has been disavowed.

REP. KOOPMAN asked if there was any way that Mr. Melton could understand the concern that citizens would have with an individual who was hired by their taxes, on taxpayer time, with taxpayer resources, advocating for one side or the other and very possibly advocating against what the voter believes. He asked if it could be that the superintendent should speak up only on his own private time. **Mr. Melton** had sympathy for what was said, but he believed the issue was back to majority rule and the determination of a board that has been elected to make those kinds of decisions in deciding how it is going to empower the majority will of the community to be heard through the elected representatives. As a strong parallel Mr. Melton, reminded the Representative he must represent the people who didn't vote for him in his last election. His concern is on behalf of the elected board of trustees and when they have met and made a decision, Mr. Melton has to presume that it expresses the majority will of the community or that the majority will of the community will change the membership of board in the next election.

REP. ANDERSON desired to hear from Lance Melton. She explained that in her way of thinking, if a board puts forth a request for a levy, she believes the board is saying it is in favor of it. **Mr. Melton** said he agrees, and what she has said is prohibited by present law without the change requested in the bill. **REP. ANDERSEN** said, "You mean the board can't put forth a levy or bond?" **Mr. Melton** explained that in order to comply with the obligation to provide the public with an opportunity and right to know, as articulated by the Montana Supreme Court, the board has to discuss, it has to lay its cards on the table. The Billings School District had an entire school closure decision closed on the basis that one trustee had one spread sheet that formed the basis of a recommendation he provided to the board on school closure. The court said that if you hit one document, it is over. If the trustee comes to the table and says, "This is why I support the bond, here are the many reasons," the trustee is in violation of present law. The law doesn't allow support passage of a bond issue until after the decision has been made. Only then can information be supplied to the public with regard to the effect on governmental operations. A trustee cannot articulate why he supports or opposes a bond issue in a board room under the existing law, except by ignoring it. That is what school districts have been doing.

REP. ANDERSEN questioned whether the committee is being asked to amend the correct portion of present law. She wonders if there should be something in statute that says the school board, before putting forth a levy or bond issue, has the right to fully discuss the reasons in their open meeting. Then they can make a decision on whether or not they are going to put the levy forth to the voters. She asked, "Is that what we should be doing for the school board members?" She emphasized that she is not talking about the school superintendent. **Mr. Melton** assured her that she is on the right section. He believes the problem could be solved with the way the bill is presented with the additional language "of opposition to" or striking "support of" and leave it relating to a bond issue. One could also do it by saying, "properly incidental, except for what a school district is restricted to." The system worked fine when the law said, "A person could do what was properly incidental to activities required or authorized by law." There existed: the requirement to meet in a public building, the requirement to give the public the right to know what the board is doing and articulate its reasons for saying, the fact that certain employees had to be in the room; someone had to take minutes. Those were all properly incidental until the law was changed in 2001 to say that "properly incidental" is now restricted to things that contradict other obligations under law. Before the law was changed, it was self executing. It had to be proved that someone was taking minutes, because minutes are required. Before the change in law, you could go to Title 20 and say; the superintendent is suppose to act pursuant to the direction of the trustees, so he can let the press know that the board voted in support of the bond issue and provide the press with the reasons why. The minutes can articulate the reasons why when they are distributed to the press within five days as required by the law. It was fine until the law was changed.

REP. ANDERSEN asked if deleting "or in support of" and left Lines 13 and 14, perhaps that would solve the problem. **Mr. Melton** answered that he believed that is the way the committee should go. He said he needed to be clear the Representative had been focusing in on the board and not the superintendent. The wording suggested would retain the right of both the board and the superintendent. **REP. ANDERSEN** said she understood that.

REP. ANDERSEN pressed Mr. Svec for information. She stated that in her experience when a school district is running a mill levy or a bond issue, the voters in the district are looking for information. She asked him if he believes the voters in Billings wanted him to give them information about why a the mill levy was necessary in the example that had been before the committee. **Mr. Svec** affirmed that the answer was yes, "That is what the voters

wanted from him." The problem with the law, as is, if all the information is positive, then the superintendent is charged with supporting the issue. The superintendent has to go out and try to find information that is negative. **REP. ANDERSEN** asked if the committee might see a copy of the information sheet that was sent out in Billings about the bond issue and then was challenged. She believes the it would be easier for the committee to understand the issue if it could see the information included in the publication which was considered a violation of political practices. **Mr. Svee** told the Representative that he would try to get a copy. He had not saved one himself.

REP. BUTCHER posed a question to Mr. Melton. He asked, "What kind of an amendment should be written to make the bill clearer without getting into a proactive position?" **Mr. Melton** said an amendment would have to tackle the issue of the trustee in the school board room, vigorously opposing or supporting the election. At present, he tells districts that the constitutional right to know, overrules what the present law states. The bill needs to be looked at carefully and make sure the committee is making sure there is a full right of discourse in the board room and a right to articulate, to distribute to the public, the decision of the board and the underlying rationale. **REP. BUTCHER** required further information. He asked Mr. Melton to jot out a potential amendment to fit what Mr. Melton is looking at for the committee's review. **Mr. Melton** said he would be pleased to work with the sponsor of the bill and the Billings School District. *{Tape: 2; Side: A; Approx. Time Counter: 0 - 13.9}*

Closing by Sponsor:

REP. DRISCOLL emphasized the job description of the Billings School Superintendent. She also emphasized that present law does not allow him to fulfill the job description. She said that by not passing the legislation she is offering, the Legislature will be accepting less than the best from the electorate, school staffs, and the Legislative Staff.

REPRESENTATIVE GALVIN-HALCRO returned to the meeting.

EXECUTIVE ACTION ON HB 83

Motion: **REP. CAMPBELL** moved HB 83 do pass.

Discussion:

REP. CAMPBELL reviewed the bill for the committee. She reminded them that it came to the committee at the request of the Office of Public Instruction (OPI). It deals with out-of-district students and the handling of the tuition money. She believed the bill had no opposition. There had initially been some opposition from county superintendents that didn't understand the bill, but she believed their questions had been answered.

REP. ANDERSEN questioned **REP. CAMPBELL**. She stated that the tuition fund is a permissive levy in the county and inquired whether the counties would levy the money and then it would go through the State Superintendent. **REP. CAMPBELL** directed her to Page 5, Line 10 of the bill where it discusses, "Except as provided in Subsection (4), the trustees of the resident district and the trustees of the district of attendance shall approve the out-of-district attendance agreement." The bill mainly deals with children who are in foster care in a district other than where their parents live. **REP. ANDERSEN** asked, "Does the money come from the tuition fund from the district where the child's parents reside?" **REP. CAMPBELL** replied that it was her understanding that it does. **REP. ANDERSEN** then inquired about Page 11, NEW SECTION, Section 7, Appropriation. "There is appropriated \$336,000 from the general fund to the superintendent of public instruction for the biennium beginning July 1, 2005, to pay the tuition and transportation costs required under 20-5-324(2) and 20-7-42." She asked, "Why would the committee appropriate money to OPI if the tuition funds of the local districts are going to be levied for this purpose?" **REP. CAMPBELL** cited that when that question was asked during the bill hearing, the representative from OPI had indicated, since the children are removed from their homes by the state, OPI felt that it was only right that the state pay the tuition when students are placed out-of-district. **REP. ANDERSEN** asked if that meant the local districts will not be levying that money on their tuition funds. "That was her understanding," replied **REP. CAMPBELL**.

REP. VILLA wished to make a clarifying statement. He said that currently the money comes out of the county equalization accounts which run statewide flat number. Then it goes to the state general fund, then the state general fund reimburses, after the tuition is taken out from the equalization monies, to go to the tuition fund. What is being proposed and the reason for the appropriation pointed out by **REP. ANDERSEN**, is because the money will be going first into the general fund then through OPI and back to the tuition fund of the counties. It won't be double dipping in any way. Rather than having the counties take the

monies off the top for the tuition fund before it goes to the state general fund; what will now happen is all the equalization accounts will go to the general fund through OPI back to the counties for the tuition payments.

REP. ANDERSEN sought further information from **REP. VILLA**. She believed it to be true that the tuition fund is a permissive fund in the districts and the counties. **REP. VILLA** replied that it is a permissive levy but only at the level that the district is allocated through Average Number Belonging (ANB). It would be capped at the number of students that the district has. He used the example that if he had five students, then he would not be allowed to exceed any permissive levies up and to that. He said the tuition fund is funded through the county equalization accounts. The **REPRESENTATIVE** referred to the handout received during the hearing of the bill. "On Figure two, there is the county equalization, the 33 mills elementary and 22 mills high school, the 55 mills equalization funds. What happens is, the tuition funds are skimmed off the top to go directly to the district before the remainder of the funds go to the state general fund." What the bill purposes to do is take the 55 mills directly to the general fund through OPI back to the districts in question. There will be no change in taxes to intake or out paying. The bill will streamline the process.

REP. ANDERSEN asked **REP. VILLA** to explain why there needs to be a \$336,000 appropriation from the general fund to OPI. **REP. VILLA** replied that the \$336,000 would be allocated through the general fund rather than being taken from the 55 mills. The money will cover the numbers of the spread sheet the committee had during the bill hearing. When the money is in-taken through the state general fund, it is passed through OPI and the money she is referencing to is the money the districts are currently taking off the top.

REP. RASER felt obligated to talk to her local county superintendent, since the committee had not heard from any county superintendents. She also talked to Jewels Waver who she believes is president of the state organization for county superintendents. Her local superintendent had a couple of concerns. She thought that the tuition fund would be better administered at the local level. She felt that her office is more aware of what is going on at the county level. She felt that this is one more duty of the county superintendent that is being taken away. There is a concern about that. Jewels Waver was concerned about there not being time for local county superintendents to have input into the committee hearing on the bill. It was the **REPRESENTATIVE's** understanding that an e mail had been sent for information but the county superintendents had

not received it. Therefore, the county superintendents were not able to give input on the bill. Mr. Waver was concerned that the paperwork would fall on one or two people at OPI, whereas, now it is split among the 56 counties. Mr. Waver believes it is very difficult to get the paperwork through the various state agencies. At the county level there is more time and it is easier for 56 people to go through the paperwork than OPI. He addressed the errors that had occurred. Mr. Waver said that the county superintendents would like to work with OPI to correct them. Both of the people she talked to believe the current situation is favorable over what the bill purposes.

REP. BUTCHER inquired of **REP. VILLA** if all the money that is responsible for funding the process is basically removed from the local school boards. He hears that the money, instead of being side tracked in current law, goes to the state and then the allocation at the other end is simply a mainline allocation to cover projected expenses from the students being brought into state control. He asked if he understands it correctly. **REP. VILLA** remarked that the bill proposes that the system would be stream-lined through the general fund and OPI. The districts would still have to submit the paperwork for the money. That would be incumbent on the districts. However, as far as taking the county equalization mills off the top before they are sent to the state general fund, he believes **REP. BUTCHER** is correct.

REP. BUTCHER said, "I am looking at the picture from a small school situation where there is a sudden impact and a large expenditure with a child that has extensive needs." He believes that it is covered by the overall general fund of OPI at this point. Irregardless of the school, instead of having to cut teaching positions, which happens in small schools if the school gets a heavy requirement for some specialized help, the small schools wouldn't get caught on this. The child's needs would fly directly to the state. It would come out of the state fund. He is wondering if the local permissive fund would go away. He is curious if the local district is avoiding permissive bill outlays in certain situations by leaving it all up to the general fund level of the state. He sees everything staying the same in regard to the particular student's needs in an individual school and it is all covered in the general fund. **REP. VILLA** stated that he wasn't quite sure if he had followed the line of thinking. He believes it is unfortunate that the idea of permissive levy entered the discussion because the permissive levy on the tuition fund is not the same as the permissive levy on other funds. There is a cap on the number of students at the top. "You can't go any higher than that," he said. **REP. BUTCHER** is speaking of the high-needs students coming into a district. The tuition monies for the students in question would be pulled

out of the 55 mills, which is across the board. The remainder would be sent to the general fund for expenditures at that level.

{Tape: 2; Side: A; Approx. Time Counter: 13.9 - 30}

{Tape: 2; Side: B}

Vote: Motion passed 9-7 on roll call vote. Voting no were REPS. KOOPMAN, SONJU, SALES, LAKE, BUTCHER, RASER, ANDERSEN.

EXECUTIVE ACTION ON HB 162

Motion/Vote: REP. BRANAE moved that HB 162 DO PASS. Motion carried unanimously by voice vote.

Motion: REP. LAKE moved that HB 162 be placed on the consent calendar. The motion passed, without objection.

ADJOURNMENT

Adjournment: 4:40 P.M.

REP. KATHLEEN GALVIN-HALCRO, Chairman

NINA ROATCH-BARFUSS, Secretary

KG/NB

Additional Exhibits:

EXHIBIT ([edh14aad0.TIF](#))